

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA

U.S.A. vs. James Henry Smith, Jr.

Docket No. 4:08-CR-59-1BR

Petition for Action on Supervised Release

COMES NOW Taron N. Seburn, U.S. Probation Officer of the court, presenting a petition for modification of the Judgment and Commitment Order of James Henry Smith, Jr., who, upon an earlier plea of guilty to Possession With Intent to Distribute More Than 5 Grams of Cocaine Base (Crack), in violation of 21 U.S.C. § 841(a)(1), and Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A), was sentenced by the Honorable W. Earl Britt, Senior U.S. District Judge, on August 3, 2009, to the custody of the Bureau of Prisons for a term of 84 months. It was further ordered that upon release from imprisonment the defendant be placed on supervised release for a period of 5 years. On April 2, 2012, Smith's sentence was reduced to 74 months pursuant to 18 U.S.C. § 3582(c)(2).

James Henry Smith, Jr., was released from custody on January 11, 2013, at which time the term of supervised release commenced.

On June 28, 2013, a Petition for Action was submitted to the court advising that Smith tested positive for cocaine on June 4, 2013. Smith's conditions of supervised release were modified, and he successfully completed the Moral Reconnection Therapy Program.

On August 26, 2014, a Violation Report was submitted advising the court of new criminal conduct after the defendant was charged by the East Carolina Police Department for Driving While License Revoked and No Liability Insurance. The probation office recommended continued supervision, and the charges were subsequently dismissed.

On March 4, 2016, a Petition for Action on Supervised Release was submitted after the defendant tested positive for cocaine on February 16, 2016. As a sanction, the defendant was enrolled in the DROPS program and was confined in the custody of the Bureau of Prisons for 5 days.

On August 2, 2016, a Violation Report was submitted following a positive test for cocaine on May 10, 2016, and his admission of drug use on July 21, 2016. The defendant was allowed to continue on supervision as he was participating in the STAR Program and substance abuse treatment at East Coast Counseling.

On May 22, 2017, a DROPS Sanction Report to the Court was submitted advising that the defendant tested positive for cocaine on May 3, 2017, and the defendant was required to complete a 10 day jail sanction.

On August 11, 2017, a Violation Report was submitted notifying the court of the defendant's failure to complete the aforementioned 10-day jail sanction as a result of experiencing transportation issues. The court agreed to reschedule the remaining 6 jail days as requested by the probation office. Service of the 6-day sanction is pending. The court was also notified of the defendant's August 2, 2017, arrest for Misdemeanor Assault on a Female (17CR55380), in Greenville, North Carolina. This offense was dismissed on August 29, 2017.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS: Smith continues to maintain full-time employment as a laborer for Crate Tech, where his only days off are Saturday and Sunday. If the pending 6-day DROPS sanction is served consecutively, it could result in the defendant losing his job. Therefore, it is respectfully recommended that the court order the pending 6-day DROPS sanction, and any subsequent DROPS sanction, be served by intermittent 2-day placements with each report date being on a Saturday and each release day being on a Sunday.

On August 29, 2017, Smith tested positive for Oxycodone. The results were confirmed by Alere Laboratory on September 7, 2017, and the defendant received a verbal reprimand for this drug use. He remains enrolled in substance abuse treatment at East Coast Counseling, and continues to participate in the STAR Program. As such, the probation office recommends that his pending 6-day DROPS sanction serve as a sanction for this drug use, in addition to pending action from the STAR Program.

PRAYING THAT THE COURT WILL ORDER that supervised release be modified as follows:

1. While under supervision in the Eastern District of North Carolina, the defendant shall participate in the DROPS Program and, in response to detected illegal drug use, shall be confined in the custody of the Bureau of Prisons for a period not to exceed 30 days of intermittent confinement, as arranged by the probation office, in the following increments: First Use - Two Days; Second Use - Five Days; Third Use - Ten Days; The defendant shall begin the DROPS Program in the third use level.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Dwayne K. Benfield
Dwayne K. Benfield
Supervising U.S. Probation Officer

/s/ Taron N. Seburn
Taron N. Seburn
U.S. Probation Officer
201 South Evans Street, Rm 214
Greenville, NC 27858-1137
Phone: 252-830-2335
Executed On: September 20, 2017

ORDER OF THE COURT

Considered and ordered this 25 day of September, 2017, and ordered filed and made a part of the records in the above case.

W. Earl Britt
Senior U.S. District Judge

